

# LIMITATIONS ON “THREE STRIKES” LAW. SEX CRIMES. PUNISHMENT. INITIATIVE STATUTE.

## OFFICIAL TITLE AND SUMMARY

Prepared by the Attorney General

### Limitations on “Three Strikes” Law. Sex Crimes. Punishment. Initiative Statute.

- Amends “Three Strikes” law to require increased sentences only when current conviction is for specified violent and/or serious felony.
- Redefines violent and serious felonies. Only prior convictions for specified violent and/or serious felonies, brought and tried separately, would qualify for second and third “strike” sentence increases.
- Allows conditional re-sentencing of persons with sentences increased under “Three Strikes” law if previous sentencing offenses, resulting in the currently charged felony/felonies, would no longer qualify as violent and/or serious felonies.
- Increases punishment for specified sex crimes against children.

### Summary of Legislative Analyst’s Estimate of Net State and Local Government

#### Fiscal Impact:

- Net state savings of potentially several tens of millions of dollars initially, increasing to several hundred million dollars annually, primarily to the prison system.
- Increased county costs of potentially more than ten million dollars annually for jail and court-related costs.

## ANALYSIS BY THE LEGISLATIVE ANALYST

### BACKGROUND

There are three kinds of crimes: felonies, misdemeanors, and infractions. A felony is the most serious type of crime. About 18 percent of persons convicted of a felony are sent to state prison. The rest are supervised on probation in the community, sentenced to county jail, or both.

Existing law classifies some felonies as “violent” or “serious,” or both. Of the inmates sentenced to prison in 2003, approximately 30 percent were convicted for crimes defined as serious or violent. Examples of felonies currently defined as violent include murder, robbery, and rape and other sex offenses. Felonies defined as serious include the same offenses defined as violent felonies, but also include other offenses such as burglary of a residence and assault with intent to commit robbery. There are other felonies that are not classified as violent or serious, such as grand theft and possession of a controlled substance.

As of April 2004, there were about 163,000 inmates in California prisons, as well as some state-contracted facilities. The costs to operate the state prison system in 2004–05 are estimated to be approximately \$5.7 billion.

**Three Strikes.** Proposition 184 (commonly referred to as the “Three Strikes and You’re Out” law) was adopted by the voters in 1994. It imposed longer prison sentences for certain repeat offenders. Specifically, it requires that a person who is convicted of a felony and who has been previously convicted of one or more violent or serious felonies, be sentenced to state prison as follows:

- **Second Strike Offense.** If the person has *one previous* serious or violent felony conviction, the sentence for *any new*

felony conviction (not just a serious or violent felony) is *twice* the term otherwise required under law for the new conviction. Offenders sentenced by the courts under this provision are often referred to as “second strikers.” As of March 2004, about 35,000 inmates were second strikers.

- **Third Strike Offense.** If the person has *two or more previous* serious or violent felony convictions, the sentence for *any new* felony conviction (not just a serious or violent felony) is life imprisonment with the minimum term being 25 years. Offenders convicted under this provision are frequently referred to as “third strikers.” As of March 2004, about 7,000 inmates were third strikers.

**Sex Offenses.** California law sets penalties for a variety of sex offenses, including sex offenses committed against children. Current law requires a prison sentence of 3, 6, or 8 years (depending on the circumstances of the crime) for anyone convicted of sexual penetration or oral copulation with a minor who is under the age of 14 and more than 10 years younger than the offender.

### PROPOSAL

This measure amends the Three Strikes law and also amends the law relating to sex crimes against children. These changes are described below.

#### Three Strikes Law

**New Crime Must Be Violent or Serious.** This measure requires that an offender would be subject to a longer sentence under the Three Strikes law only if the conviction for the new crime is for a violent or serious felony, instead of any felony as provided under current law.

## ANALYSIS BY THE LEGISLATIVE ANALYST (CONT.)

**Narrows Felonies Considered Violent or Serious.** This measure reduces the number of felony offenses considered serious or violent. Figure 1 lists for illustration purposes selected felonies that would no longer be considered serious or violent. These changes are not limited to convictions under the Three Strikes law and, therefore, would also affect some other aspects of sentencing, such as the amount of credits inmates can earn towards a reduced sentence.

FIGURE 1

### SELECTED FELONIES NO LONGER CONSIDERED VIOLENT OR SERIOUS OFFENSES UNDER PROPOSITION 66

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| <ul style="list-style-type: none"> <li>• Attempted burglary</li> <li>• Conspiracy (multiple people planning) to commit assault</li> <li>• Nonresidential arson resulting in no significant injuries</li> <li>• Threats to commit criminal acts that would result in significant personal injury</li> </ul> | <ul style="list-style-type: none"> <li>• Burglary of an unoccupied residence</li> <li>• Interfering with a trial witness without the use of force or threats and not in the furtherance of a conspiracy</li> <li>• Participation in felonies committed by a criminal street gang</li> <li>• Unintentional infliction of significant personal injury while committing a felony offense</li> </ul> |
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**Requires Strikes to Be Tried Separately.** Under current law, a defendant can receive multiple strikes in a single trial. For example, a defendant in a burglary case can be convicted of two separate burglary offenses in the same trial and get two strikes. This measure requires that eligible offenses be brought and tried in separate trials in order for each of them to be counted as a strike. This provision could result in counties holding separate trials in cases where local law enforcement officials want to obtain longer sentences under the Three Strikes law.

**Resentencing of Offenders.** This measure requires the state to resentence offenders currently serving an indeterminate life sentence under the Three Strikes law if their third strike resulted from a conviction for a nonviolent and nonserious felony offense, as defined by this proposition. Resentencing must occur no later than 180 days after this measure takes effect. The resentencing requirement will result in reduced prison sentences for some inmates and release from prison for others.

### Sex Offenders of Children Under 14 Years of Age

This measure increases a prison sentence to 6, 8, or 12 years for the first conviction for sexual penetration or oral copulation with a minor who is under the age of 14 and more than 10 years younger than the offender. However, if the victim is under the age of 10, the district attorney has the discretion to seek imprisonment of 25 years to life. This measure requires that a second conviction for these offenses shall result in a sentence

of 25 years to life. It also requires the state to provide counseling services for these offenders while they are in prison and for at least one year following release from prison.

### FISCAL EFFECTS

#### Three Strikes Law

**State Prison Savings.** The prison population would be lower because of the proposition's provisions that (1) limit new Three Strikes qualifying convictions to serious or violent felonies, (2) require resentencing of some third strikers, and (3) reduce the number of crimes that are considered serious or violent. The combined effect of these changes would be prison operations savings of potentially several tens of millions of dollars in the first couple of years, growing to as much as several hundred millions of dollars in ongoing savings when the full impact of the measure is realized in about a decade. The lower prison population resulting from this measure would potentially result in capital outlay savings in the long term associated with prison construction and renovations that would otherwise have been needed.

**State Parole Supervision Costs.** This measure would accelerate the release of some state prisoners to parole due to the shorter prison sentences served by those inmates. The cost associated with this increase in the parole caseload is unknown, but could be about ten million dollars annually when the full impact of the measure is realized.

**Costs for Court-Related Activities and County Jails.** This measure would result in additional state and local costs for the courts and county jails. Three factors primarily account for the increased costs. First, the resentencing provision would increase court caseloads, and local jails would likely house inmates during the proceedings. Second, it is likely that some offenders released from prison because of this measure will be subsequently prosecuted and convicted for new crimes. Third, some offenders who would be sentenced to state prison under current law will be sentenced to jail, instead of prison, under this measure for crimes newly defined as nonserious and non-violent. We estimate these additional costs could be as much as a few tens of millions of dollars annually when the full impact of the measure is realized. These costs would be split between state and local governments.

**Other Impacts on State and Local Governments.** There could be other costs to the extent that offenders released from prison because of this measure require other government services, or commit additional crimes that result in victim-related government costs, such as government-paid health care for persons without insurance. Alternatively, there could be offsetting revenue to the extent that offenders released from prison become taxpaying citizens. The extent and magnitude of these impacts is unknown.

#### Sex Offenders of Children

The annual cost of incarcerating and providing counseling services to the sex offenders affected by this measure would likely grow from a couple hundred thousand dollars to as much as a couple of million dollars on an ongoing basis.